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HOUSE BILL 743

**44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

INTRODUCED BY

James G. Taylor

AN ACT

RELATING TO LOCAL GOVERNMENTS; EXPANDING THE DEFINITION OF  
TRADITIONAL HISTORIC COMMUNITIES; PROVIDING FOR ASSESSMENTS ON  
REAL PROPERTY TO PRESERVE TRADITIONAL HISTORIC COMMUNITIES;  
PROVIDING CERTAIN RESTRICTIONS ON THE JURISDICTION OF  
MUNICIPALITIES OVER TRADITIONAL HISTORIC COMMUNITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 3-2-3 NMSA 1978 (being Laws 1965,  
Chapter 300, Section 14-2-3, as amended) is amended to read:

"3-2-3. URBANIZED TERRITORY--INCORPORATION LIMITED  
WITHIN URBANIZED TERRITORY. --

A. Urbanized territory is that territory within  
the same county and within five miles of the boundary of any  
municipality having a population of five thousand or more  
persons and that territory within the same county and within

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1 three miles of a municipality having a population of less than  
2 five thousand persons, except that territory [ ~~in a class B~~  
3 ~~county with a population between ninety five thousand and~~  
4 ~~ninety nine thousand five hundred, based on the 1990 federal~~  
5 ~~decennial census, declared by an ordinance of the board of~~  
6 ~~county commissioners~~] determined pursuant to Section 3-7-1.1  
7 NMSA 1978 to be a traditional historic community shall not be  
8 considered urbanized territory and shall not be annexed by a  
9 municipality unless it is considered for annexation pursuant  
10 to a petition requesting annexation signed by a majority of  
11 the registered qualified electors within the traditional  
12 historic community.

13 B. No territory within an urbanized territory  
14 shall be incorporated as a municipality unless the:

15 (1) municipality or municipalities causing  
16 the urbanized territory approve, by resolution, the  
17 incorporation of the territory as a municipality;

18 (2) residents of the territory proposed to be  
19 incorporated have filed with the municipality a valid petition  
20 to annex the territory proposed to be incorporated and the  
21 municipality fails, within one hundred twenty days after the  
22 filing of the annexation petition, to annex the territory  
23 proposed to be incorporated; or

24 (3) residents of the territory proposed to be  
25 annexed conclusively prove that the municipality is unable to

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1 provide municipal services within the territory proposed to be  
2 incorporated within the same period of time that the proposed  
3 municipality could provide municipal service.

4 C. A traditional historic community may become  
5 incorporated even though it is located within what is defined  
6 as urbanized territory pursuant to Subsection A of this  
7 section, by following the procedures set forth in Sections  
8 3-2-5 through 3-2-9 NMSA 1978. "

9 Section 2. Section 3-7-1.1 NMSA 1978 (being Laws 1995,  
10 Chapter 170, Section 5 and Laws 1995, Chapter 211, Section 4)  
11 is amended to read:

12 "3-7-1.1. TRADITIONAL HISTORIC COMMUNITY--  
13 QUALIFICATIONS--ANNEXATION RESTRICTIONS. --

14 A. To qualify as a traditional historic community,  
15 an area shall:

16 (1) be an unincorporated area [ ~~of a class B~~  
17 ~~county with a population between ninety-five thousand and~~  
18 ~~ninety-nine thousand five hundred, based on the 1990 federal~~  
19 ~~decennial census~~];

20 (2) be an identifiable village, community,  
21 neighborhood or district that can be documented as having  
22 existed for more than one hundred years;

23 (3) include structures or landmarks that are  
24 associated with the identity of the specific village,  
25 community, neighborhood or district seeking designation as a

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1 traditional historic community;

2 (4) have a distinctive character or  
3 traditional quality that can be distinguished from surrounding  
4 areas or new developments in the vicinity; and

5 (5) pursuant to Subsection C of this section,  
6 be declared a traditional historic community by an ordinance  
7 of the board of county commissioners of the county in which  
8 the petitioning village, community, neighborhood or district  
9 is located.

10 B. A traditional historic community may be annexed  
11 by a municipality only by petition of a majority of the  
12 registered qualified electors of the territory within the  
13 traditional historic community proposed to be annexed by the  
14 municipality or by the arbitration method of annexation only  
15 upon petition of a majority of the registered qualified  
16 electors of the territory within the traditional historic  
17 community.

18 C. The board of county commissioners shall declare  
19 an area to be a traditional historic community if:

20 (1) the board is presented with a petition  
21 for the declaration signed by a majority of the qualified  
22 electors residing in the area proposed to be a traditional  
23 historic community; and

24 (2) the board determines that the criteria  
25 specified in Paragraphs (1) through (4) of Subsection A of

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1 this section have been satisfied. "

2 Section 3. A new Section 3-7-1.2 NMSA 1978 is enacted to  
3 read:

4 "3-7-1.2. [NEW MATERIAL] TRADITIONAL HISTORIC  
5 COMMUNITY--IMPROVEMENTS--ASSESSMENT OF PRESERVATION FEE. --

6 A. A petition, signed by real property owners that  
7 represent both the majority of real property owners within the  
8 traditional historic community and the majority of real  
9 property by assessed valuation within the traditional historic  
10 community, exclusive of property owned by the United States or  
11 the state or any of its political subdivisions, may be  
12 submitted to the board of county commissioners together with a  
13 plan specifying proposed improvements necessary for the  
14 community to preserve its traditional historic values and a  
15 proposed assessment schedule for paying the costs of the  
16 improvements.

17 B. Upon receipt of a petition submitted pursuant  
18 to Subsection A of this section, the board of county  
19 commissioners shall, pursuant to Section 3-7-1.3 NMSA 1978,  
20 hold a hearing on the proposed plan and assessment.

21 C. If, after the hearing, the board of county  
22 commissioners determines that the improvements are likely to  
23 preserve the traditional historic values of the community and  
24 are otherwise in the best interests of the community and its  
25 residents, it shall enact an ordinance assessing a

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1 preservation fee against the real property in the community.

2 The ordinance shall include:

3 (1) a list of the improvements to be made  
4 with the proceeds of the assessment;

5 (2) the amount of benefit estimated to be  
6 conferred on each tract or parcel of real property;

7 (3) a description of the real property to be  
8 assessed the preservation fee;

9 (4) the assessment method to be used to  
10 finance the improvements;

11 (5) the amount of the assessment to be  
12 imposed on each real property owner;

13 (6) the time and terms of paying the  
14 preservation fee or installments on the fee;

15 (7) the rate or rates of interest upon  
16 deferred payments of the fee;

17 (8) penalties to be charged for delinquent  
18 payment of an assessment;

19 (9) procedures and guidelines for the  
20 classification of property for the fee;

21 (10) a reasonable charge to recover the  
22 county's expense for the assessment, collection and  
23 administration of the fee; and

24 (11) provisions for the control, investment  
25 and expenditure of the money collected by the assessment.

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1           D. After the publication of the ordinance enacting  
2 the preservation fee, the assessment together with any  
3 interest or penalty accruing to the assessment is a lien upon  
4 the tract or parcel of land so assessed. The lien is coequal  
5 with the lien for general real property taxes and the lien of  
6 other improvement districts and all other liens, claims and  
7 titles. Unmatured installments are not deemed to be within  
8 the terms of any general covenant or warranty. All  
9 purchasers, mortgagees or encumbrancers of a tract or parcel  
10 of land so assessed shall hold the tract or parcel of land  
11 subject to the lien so created. "

12           Section 4. A new Section 3-7-1.3 NMSA 1978 is enacted to  
13 read:

14           "3-7-1.3. [NEW MATERIAL] TRADITIONAL HISTORIC  
15 COMMUNITY--NOTICE AND HEARING ON PLAN FOR IMPROVEMENTS. --

16           A. The notice of public hearing required by  
17 Subsection B of Section 3-7-1.2 NMSA 1978 shall contain:

18                   (1) the time and place where the board will  
19 hold a hearing on the proposed plan for improvements and  
20 assessments;

21                   (2) the estimated cost of improvements; and

22                   (3) the preliminary estimate of the  
23 assessment of a preservation fee against each tract or parcel  
24 of real property.

25           B. The notice of the public hearing shall be

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1 mailed to the affected real property owners in the traditional  
2 historic community at least thirty days prior to the date of  
3 the hearing. In addition, notice shall be published once each  
4 week for four successive weeks in a newspaper of general  
5 circulation in the county in which the traditional historic  
6 community lies. The last publication shall be at least three  
7 days before the date of the hearing.

8 C. Any resident or real property owner affected by  
9 the improvements or proposed fee shall be given opportunity to  
10 appear at the public hearing and present his views on the  
11 plan. "

12 Section 5. Section 3-20-5 NMSA 1978 (being Laws 1965,  
13 Chapter 300, Section 14-19-5, as amended) is amended to read:

14 "3-20-5. COUNTY AND MUNICIPAL JURISDICTION OVER  
15 SUBDIVISION--CONCURRENT JURISDICTION--ACCEPTANCE OF UNAPPROVED  
16 STREETS--EXERCISE OF JURISDICTION.--

17 A. For the purpose of approving the subdivision  
18 and platting of land:

19 (1) the jurisdiction of a county includes all  
20 territory not within the boundary of a municipality;

21 (2) except as provided in Paragraph (4) of  
22 this subsection, the jurisdiction of a municipality having a  
23 population of twenty-five thousand or more persons according  
24 to the most recent census includes all territory within five  
25 miles of the boundary of the municipality and not within the

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1 boundary of another municipality;

2 (3) the jurisdiction of a municipality having  
3 a population of [~~less~~] fewer than twenty-five thousand persons  
4 according to the most recent census includes all territory  
5 within three miles of the municipal boundary and not within  
6 the boundary of another municipality; [~~and~~]

7 (4) a municipality having a population over  
8 two hundred thousand persons according to the most recent  
9 census located in a class A county shall share approval  
10 authority with the county of subdivisions and platting of land  
11 within five miles of the municipal boundary. Approval shall  
12 be through the actions of the extraterritorial land use  
13 commission and extraterritorial land use authority; and

14 (5) the jurisdiction of a municipality shall  
15 not include any part of an area determined, pursuant to  
16 Section 3-7-1.1 NMSA 1978, to be a traditional historic  
17 community unless a petition, signed by a majority of the  
18 qualified electors in the traditional historic community and  
19 consenting to the jurisdiction, has been filed with the  
20 municipality.

21 B. Each municipality shall have jurisdiction over  
22 the territory within its boundary.

23 C. If territory not lying within the boundary of a  
24 municipality is within the platting jurisdiction of more than  
25 one municipality, the platting jurisdiction of each

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1 municipality shall terminate equidistant from the boundary of  
2 each municipality unless one municipality has a population  
3 according to the most recent census of [~~less~~] fewer than two  
4 thousand five hundred persons and another municipality has a  
5 population according to the most recent census of more than  
6 two thousand five hundred persons. Then the platting  
7 jurisdiction of the municipality having the greatest  
8 population extends to such territory.

9 D. Except as provided in Paragraph (4) or (5) of  
10 Subsection A of this section, the county and a municipality  
11 shall exercise concurrent jurisdiction over territory within  
12 the platting jurisdiction of both the county and the  
13 municipality.

14 E. The governing body of a municipality or the  
15 board of county commissioners may not locate, construct or  
16 accept any street dedication until the street dedication is  
17 first submitted to the planning authority for approval or  
18 disapproval. If disapproved by the planning authority, the  
19 street dedication may be approved by a two-thirds vote of all  
20 the members of the governing body of the municipality having  
21 jurisdiction or of the board of county commissioners having  
22 jurisdiction. A street dedication accepted by the planning  
23 authority or by a two-thirds vote of all the members of the  
24 governing body of the municipality having jurisdiction or of  
25 the board of county commissioners having jurisdiction shall

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1 have the same status as any other public street."

2 Section 6. Section 3-21-1 NMSA 1978 (being Laws 1965,  
3 Chapter 300, Section 14-20-1, as amended by Laws 1995, Chapter  
4 170, Section 4 and also by Laws 1995, Chapter 211, Section 3)  
5 is amended to read:

6 "3-21-1. ZONING--AUTHORITY OF COUNTY OR MUNICIPALITY.--

7 A. For the purpose of promoting health, safety,  
8 morals or the general welfare, a county or municipality is a  
9 zoning authority and may regulate and restrict within its  
10 jurisdiction the:

11 (1) height, number of stories and size of  
12 buildings and other structures;

13 (2) percentage of a lot that may be occupied;

14 (3) size of yards, courts and other open  
15 space;

16 (4) density of population; and

17 (5) location and use of buildings, structures  
18 and land for trade, industry, residence or other purposes.

19 B. The county or municipal zoning authority may:

20 (1) divide the territory under its  
21 jurisdiction into districts of such number, shape, area and  
22 form as is necessary to carry out the purposes of Sections  
23 3-21-1 through 3-21-14 NMSA 1978; and

24 (2) regulate or restrict the erection,  
25 construction, reconstruction, alteration, repair or use of

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1 buildings, structures or land in each district. All such  
2 regulations shall be uniform for each class or kind of  
3 buildings within each district, but regulation in one district  
4 may differ from regulation in another district.

5 C. All state-licensed or state-operated community  
6 residences for the mentally ill or developmentally disabled  
7 serving ten or fewer persons may be considered a residential  
8 use of property for purposes of zoning and may be permitted  
9 use in all districts in which residential uses are permitted  
10 generally, including particularly residential zones for  
11 single-family dwellings.

12 D. A board of county commissioners of the county  
13 in which the greatest portion of the territory of the  
14 petitioning village, community, neighborhood or district lies  
15 may declare by ordinance that a village, community,  
16 neighborhood or district is a "traditional historic community"  
17 upon petition by twenty-five percent or more of the registered  
18 qualified electors of the territory within the village,  
19 community, neighborhood or district requesting the  
20 designation. The number of registered qualified electors  
21 shall be based on county records as of the date of the last  
22 general election.

23 E. Any village, community, neighborhood or  
24 district that is declared a traditional historic [village]  
25 community pursuant to Section 3-7-1.1 NMSA 1978 shall be

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1 excluded from the extraterritorial zone and extraterritorial  
2 zoning authority of any municipality whose extraterritorial  
3 zoning authority extends to include all or a portion of the  
4 traditional historic community and shall be subject to the  
5 zoning jurisdiction of the county in which the greatest  
6 portion of the traditional historic community lies."

7 Section 7. Section 3-46-20 NMSA 1978 (being Laws 1969,  
8 Chapter 221, Section 18) is amended to read:

9 "3-46-20. DEFINITION--AREA OF OPERATION.--As used in the  
10 Urban ~~[Renewal]~~ Development Law, "area of operation" means the  
11 area within the corporate limits of the municipality and the  
12 area within five miles of such limits, or otherwise on  
13 municipally owned property wherever located, except that it  
14 shall not include any area which lies within the territorial  
15 boundaries of another municipality unless an ordinance [ ~~shall~~  
16 ~~have~~] has been adopted by the governing body of [ ~~such~~] the  
17 other municipality declaring a need therefor. "Area of  
18 operation" does not include any part of an area determined,  
19 pursuant to Section 3-7-1.1 NMSA 1978, to be a traditional  
20 historic community unless a petition, signed by a majority of  
21 the qualified electors in the traditional historic community  
22 and consenting to the inclusion, has been filed with the  
23 municipality. "

24 Section 8. Section 3-60A-4 NMSA 1978 (being Laws 1979,  
25 Chapter 391, Section 4, as amended) is amended to read:

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- 1           "3- 60A- 4.   DEFINITIONS. --As used in the Metropolitan  
2 Redevelopment Code:
- 3           A.   "public body" means a municipality, board,  
4 commission, authority, district or any other political  
5 subdivision or public body of the state;
- 6           B.   "local governing body" means the city council  
7 or city commission of a charter municipality created pursuant  
8 to the provisions of Article 10, Section 6 of the constitution  
9 of New Mexico;
- 10          C.   "mayor" means the mayor or the chairman of the  
11 city commission or other officer or body having the duties  
12 customarily imposed on the head of a municipality;
- 13          D.   "municipality" means a charter city or town  
14 created pursuant to the provisions of Article 10, Section 6 of  
15 the constitution of New Mexico or a city or town having a  
16 population in excess of twenty thousand persons;
- 17          E.   "clerk" means the clerk or other official of  
18 the municipality who is the chief custodian of the official  
19 records of the municipality;
- 20          F.   "federal government" includes the United States  
21 of America or any agency or instrumentality, corporate or  
22 otherwise, of the United States;
- 23          G.   "state" means the state of New Mexico;
- 24          H.   "slum area" means an area within the area of  
25 operation in which numerous buildings, improvements and

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1 structures, whether residential or nonresidential, which, by  
2 reason of its dilapidation, deterioration, age, obsolescence  
3 or inadequate provision for ventilation, light, air,  
4 sanitation or open spaces, high density of population,  
5 overcrowding or the existence of conditions [~~which~~] that  
6 endanger life or property by fire or other causes, is  
7 conducive to ill health, transmission of disease, infant  
8 mortality, juvenile delinquency or crime and is detrimental to  
9 the public health, safety, morals or welfare;

10 I. "blighted area" means an area within the area  
11 of operation other than a slum area [~~which, by reason~~] that,  
12 because of the presence of a substantial number of  
13 deteriorated or deteriorating structures, predominance of  
14 defective or inadequate street layout, faulty lot layout in  
15 relation to size, adequacy, accessibility or usefulness,  
16 insanitary or unsafe conditions, deterioration of site or  
17 other improvements, diversity of ownership, tax or special  
18 assessment delinquency exceeding the fair value of the land,  
19 defective or unusual conditions of title, improper  
20 [~~subdivisions~~] subdivision or lack of adequate housing  
21 facilities in the area or obsolete or impractical planning and  
22 platting or an area where a significant number of commercial  
23 or mercantile businesses have closed or significantly reduced  
24 their operations due to the economic losses or loss of profit  
25 due to operating in the area, low levels of commercial or

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1 industrial activity or redevelopment or any combination of  
2 such factors [~~which~~] that substantially impairs or arrests the  
3 sound growth and economic health and well-being of a  
4 municipality or locale within a municipality or an area  
5 [~~which~~] that retards the provisions of housing accommodations  
6 or constitutes an economic or social burden and is a menace to  
7 the public health, safety, morals or welfare in its present  
8 condition and use;

9 J. "metropolitan redevelopment project" or  
10 "project" is an activity, undertaking or series of activities  
11 or undertakings designed to eliminate slums or blighted areas  
12 in areas designated as metropolitan redevelopment areas and  
13 [~~which~~] that conforms to an approved plan for the area for  
14 slum clearance and redevelopment, rehabilitation and  
15 conservation;

16 K. "slum clearance and redevelopment" means the  
17 use of those powers authorized by the Metropolitan  
18 Redevelopment Code for the purpose of eliminating slum areas  
19 and undertaking activities authorized by the Metropolitan  
20 Redevelopment Code to rejuvenate or revitalize those areas so  
21 that the conditions [~~which~~] that caused those areas to be  
22 designated slum areas are eliminated;

23 L. "rehabilitation" or "conservation" means the  
24 restoration and renewal of a slum or blighted area or portion  
25 thereof in accordance with any approved plan by use of powers

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1 granted by the Metropolitan Redevelopment Code;

2 M "metropolitan redevelopment area" means a slum  
3 area or a blighted area or a combination thereof [ ~~which~~] that  
4 the local governing body so finds and declares and designates  
5 as appropriate for a metropolitan redevelopment project;

6 N. "metropolitan redevelopment plan" means a plan,  
7 as it exists from time to time, for one or more metropolitan  
8 redevelopment areas or for a metropolitan redevelopment  
9 project, which plan shall:

10 (1) seek to eliminate the problems created by  
11 a slum area or blighted area;

12 (2) conform to the general plan for the  
13 municipality as a whole; and

14 (3) be sufficient to indicate the proposed  
15 activities to be carried out in the area, including but not  
16 limited to any proposals for land acquisition; proposals for  
17 demolition and removal of structures; redevelopment; proposals  
18 for improvements, rehabilitation and conservation; zoning and  
19 planning changes; land uses, maximum densities, building  
20 restrictions and requirements; and the plan's relationship to  
21 definite local objectives respecting land uses, improved  
22 traffic patterns and controls, public transportation, public  
23 utilities, recreational and community facilities, housing  
24 facilities, commercial activities or enterprises, industrial  
25 or manufacturing use and other public improvements;

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1           O. "real property" includes all lands, including  
2 improvements and fixtures thereon, and property of any nature  
3 appurtenant thereto or used in connection therewith and every  
4 estate, interest, right and use, legal or equitable, therein,  
5 including terms for years and liens by way of judgment,  
6 mortgage or otherwise;

7           P. "bonds" means any bonds, including refunding  
8 bonds, notes, interim certificates, certification of  
9 indebtedness, debentures, metropolitan redevelopment bonds or  
10 other securities evidencing an obligation and issued under the  
11 provisions of the Metropolitan Redevelopment Code or other  
12 obligations;

13           Q. "obligee" includes any bondholder, agent or  
14 trustee for any bondholder or lessor demising to the  
15 municipality property used in connection with a metropolitan  
16 redevelopment project or any assignee or assignees of such  
17 lessor's interest or any part thereof;

18           R. "person" means any individual, firm,  
19 partnership, corporation, company, association, joint stock  
20 association or body politic or the state or any political  
21 subdivision thereof and shall further include any trustee,  
22 receiver, assignee or other person acting in a similar  
23 representative capacity;

24           S. "area of operation" means the area within the  
25 corporate limits of the municipality and the area outside of

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1 the corporate limits but within five miles of such limits or  
2 otherwise on municipally owned property wherever located,  
3 except that it [~~shall~~] does not include any area [~~which~~] that  
4 lies within the territorial boundaries of another municipality  
5 unless an ordinance has been adopted by the governing body of  
6 the other municipality declaring a need therefor and does not  
7 include any part of an area determined, pursuant to Section  
8 3-7-1.1 NMSA 1978, to be a traditional historic community  
9 unless a petition, signed by a majority of the qualified  
10 electors in the traditional historic community and consenting  
11 to the inclusion, has been filed with the municipality;

12 T. "board" or "commission" means a board,  
13 commission, department, division, office, body or other unit  
14 of the municipality designated by the local governing body to  
15 perform functions authorized by the Metropolitan Redevelopment  
16 Code as directed by the local governing body; and

17 U. "public officer" means any person who is in  
18 charge of any department or branch of government of the  
19 municipality. "